

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17, the Department of Transportation, on December 13, 2011, adopted amendments to Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

These amendments implement changes to the Federal Motor Carrier Safety Regulations that, effective January 30, 2012, require all applicants for a commercial driver’s license (CDL), whether the CDL is initial, transferred, renewed or upgraded, to self-certify to the type of driving they engage in and to give the Department a copy of the driver’s current medical examiner’s certificate if the driver has certified to non-excepted interstate driving. Current CDL holders are required to complete a self-certification, and to submit a current medical examiner’s certificate if certifying to non-excepted interstate driving, before January 30, 2014. The Department will post to the Commercial Driver’s License Information System a medical status of “certified” for all persons who certify to non-excepted interstate driving and provide a medical examiner’s certificate. Current CDL holders who fail to self-certify or provide a current medical examiner’s certificate before January 30, 2014, and drivers certifying to non-excepted interstate driving who do not maintain their certified status by giving the Department a copy of each subsequently issued medical examiner’s certificate or any associated medical variance before the previous certificate or variance expires will be subject to an immediate posting of their Commercial Driver’s License Information System medical status as “not certified” and to a downgrade of their CDLs. The downgrade becomes effective 60 days after the expiration of the medical examiner’s certificate or variance. A driver whose CDL privilege is removed may regain the privilege at any time by taking the action required to avoid the CDL downgrade, provided that the driver remains otherwise eligible for a CDL.

New definitions of “commercial driver’s license,” “commercial driver’s license downgrade,” “commercial driver’s license information system driver’s record,” “medical examiner,” “medical examiner’s certificate,” “medical variance,” and “self-certification” are adopted in rule 761—607.3(321). These definitions are consistent with and not different from established federal definitions of these terms and are included in this chapter only for the purpose of reference and clarity in their use in the new “CDL downgrade” rule established in Item 4.

These amendments also update the citation in 49 Code of Federal Regulations (CFR) Part 383. The amendments to 49 CFR Part 383 that have become effective since the 2008 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Parts 383, 384, 390 and 391 (FR Vol. 73, No. 231, Page 73096, 12-1-08)

The Federal Motor Carrier Safety Administration amends the Federal Motor Carrier Safety Regulations to require interstate CDL holders subject to the physical qualification requirements to provide a current original or copy of their medical examiner’s certificates to their state driver licensing agency. State driver licensing agencies are required to record on the Commercial Driver’s License Information System driver’s record the self-certification the driver made regarding the applicability of the federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule.

Parts 383, 384, 390, 391 and 392 (FR Vol. 75, No. 186, Page 59118, 9-27-10)

The Federal Motor Carrier Safety Administration prohibits texting by commercial motor vehicle drivers while they are operating in interstate commerce and imposes sanctions, including civil penalties and disqualification from operating commercial motor vehicles in interstate commerce, for drivers who fail to comply. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving.

The Federal Motor Carrier Safety Administration amends the CDL knowledge and skills testing standards and establishes new minimum federal standards for states to issue the commercial learner's permit. The final rule requires that a commercial learner's permit holder meet virtually the same requirements as a CDL holder.

These amendments are necessary to establish compliance with federal rules for minimum federal standards for commercial driver licensing, reporting and penalties. Pursuant to 49 U.S.C. Section 31311, a state must comply with minimum standards to avoid having amounts withheld from apportionment under 49 U.S.C. Section 31314. As provided in 49 U.S.C. Section 31314, 5 percent of a state's apportionment for Interstate Maintenance, National Highway System, and Surface Transportation Program may be withheld for a first year of noncompliance, and 10 percent of those apportionments may be withheld each year thereafter. The estimated first year amount would be \$14.9 million, and the estimated amount for each year thereafter would be \$29.7 million, based on 2010 apportionments. These amendments implement 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17, which was enacted to establish compliance with new federal minimum standards for licensing, reporting, and penalties that appear at 49 CFR Sections 383.71 and 383.73 and which requires compliance beginning January 30, 2012.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because notice and public participation would preclude compliance with the federal rules by January 30, 2012.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective January 30, 2012. The Department finds that these amendments confer a benefit or remove a potential restriction on Iowa CDL holders who operate in interstate commerce, as the amendments allow them to establish a "certified" status as required for interstate operation and to continue without potential interruption of their privilege to operate commercially in other states.

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with 49 U.S.C. Section 31311.

These amendments are also published herein under Notice of Intended Action as **ARC 9955B** to allow public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 321 and 2011 Iowa Acts, Senate File 205, sections 13, 14 and 17.

These amendments shall become effective January 30, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **761—607.3(321)**:

"Commercial driver's license" or *"CDL"* means a license issued to an individual by a state or other jurisdiction of domicile, in accordance with the standards contained in 49 CFR Part 383, which authorizes the individual to operate a class of a commercial motor vehicle.

"Commercial driver's license downgrade" or *"CDL downgrade"* means either:

1. The driver changes the driver's self-certification of type of driving from non-excepted interstate to excepted interstate, non-excepted intrastate, or excepted intrastate driving, or
2. The department removed the CDL privilege from the driver's license.

"Commercial driver's license information system driver's record" or *"CDLIS driver's record"* means the electronic record of the individual's CDL driver's status and history stored by the state-of-record as part of the commercial driver's license information system established under 49 U.S.C. Section 31309.

"Medical examiner" means a person who is licensed, certified or registered, in accordance with applicable state laws and regulations, to perform physical examinations. The term includes but is not limited to doctors of medicine, doctors of osteopathy, physician assistants, advanced registered nurse practitioners, and doctors of chiropractic.

“*Medical examiner’s certificate*” means a certificate completed and signed by a medical examiner under the provisions of 49 CFR Section 391.43.

“*Medical variance*” means a driver has received one of the following from the Federal Motor Carrier Safety Administration that allows the driver to be issued a medical certificate:

1. An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 CFR Part 381, Subpart C, or 49 CFR Section 391.62, or 49 CFR Section 391.64.
2. A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 CFR Section 391.49.

“*Self-certification*” means a written certification of which category of type of driving an applicant for a commercial driver’s license engages in or intends to engage in, from the following categories:

1. Non-excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR Part 391, and is required to obtain a medical examiner’s certificate by 49 CFR Section 391.45.
2. Excepted interstate. The person certifies that the person operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR Section 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR Part 391, and is therefore not required to obtain a medical examiner’s certificate by 49 CFR Section 391.45.
3. Non-excepted intrastate. The person certifies that the person operates only in intrastate commerce and is subject to state driver qualification requirements.
4. Excepted intrastate. The person certifies that the person operates only in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements as set forth in Iowa Code section 321.449.

ITEM 2. Amend rule **761—607.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.174, 321.188 as amended by 2011 Iowa Acts, Senate File 205, sections 13 and 14, 321.191, 321.193 and 321.208 and 2011 Iowa Acts, Senate File 205, section 17.

ITEM 3. Amend rule 761—607.10(321) as follows:

761—607.10(321) Adoption of federal regulations.

607.10(1) Code of Federal Regulations. The department adopts the following portions of the Code of Federal Regulations which are referenced throughout this chapter of rules:

- a. 49 CFR Section 391.11 as adopted in 761—Chapter 520.
- b. 49 CFR Section 392.5 as adopted in 761—Chapter 520.
- c. The following portions of 49 CFR Part 383 (October 1, ~~2008~~ 2011):
 - (1) Section 383.51(b), Disqualification for major offenses, and Section 383.51(a)(5), Reinstatement after lifetime disqualification.
 - (2) Subpart E—Testing and Licensing Procedures, which contains Sections 383.71-383.77.
 - (3) Subpart G—Required Knowledge and Skills, which contains Sections 383.110-383.123.
 - (4) Subpart H—Tests, which contains Sections 383.131-383.135.

607.10(2) Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

This rule is intended to implement Iowa Code sections 321.187, 321.188, 321.208 and 321.208A and 2011 Iowa Acts, Senate File 205, section 17.

ITEM 4. Adopt the following new rule 761—607.50(321):

761—607.50(321) Self-certification of type of driving and submission of medical examiner’s certificate.

607.50(1) Applicants for new, transferred, renewed or upgraded CDL.

- a. A person shall provide to the department a self-certification of type of driving if the person is applying for:

- (1) An initial commercial driver's license,
- (2) A transfer of a commercial driver's license from a prior state of domicile to the state of Iowa,
- (3) Renewal of a commercial driver's license, or
- (4) A license upgrade for a commercial driver's license or an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license.

b. The self-certification shall be on a form or in a format, which may be electronic, as provided by the department.

607.50(2) *Enrollment of existing CDL holders.* Every person who holds a commercial driver's license on or after January 30, 2012, and up to January 30, 2014, and who has not otherwise made a self-certification of type of driving under subrule 607.50(1) shall make to the department a self-certification of type of driving. The self-certification may be made on or after January 30, 2012, but must be made no later than January 29, 2014.

607.50(3) *Submission of medical examiner's certificate by persons certifying to non-excepted interstate driving.* Every person who self-certifies to non-excepted interstate driving must give the department a copy of the person's current medical examiner's certificate. A person who fails to provide a required medical examiner's certificate shall not be allowed to proceed with an initial issuance, transfer, renewal, or upgrade of a license until the person gives the department a medical examiner's certificate that complies with the requirements of this subrule, or changes the person's self-certification of type of driving to a type other than non-excepted interstate driving. For persons submitting a current medical examiner's certificate, the department shall post a medical certification status of "certified" on the person's CDLIS driver's record. A person who self-certifies to a type of driving other than non-excepted interstate shall have no medical certification status on the CDLIS driver's record.

607.50(4) *Maintaining certified status.* To maintain a medical certification status of "certified," a person who self-certifies to non-excepted interstate driving must give the department a copy of each subsequently issued medical examiner's certificate valid for the person. The copy must be given to the department at least ten days before the previous medical examiner's certificate expires.

607.50(5) *CDL downgrade.* If the medical examiner's certificate or medical variance for a person self-certifying to non-excepted interstate driving expires or if the Federal Motor Carrier Safety Administration notifies the department that the person's medical variance was removed or rescinded, the department shall post a medical certification status of "not certified" to the person's CDLIS driver's record and shall initiate a downgrade of the person's commercial driver's license. The medical examiner's certificate of a person who fails to maintain a medical certification status of "certified" as required by subrule 607.50(4) shall be deemed to be expired on the date of expiration of the last medical examiner's certificate filed for the person as shown by the person's CDLIS driver's record. The downgrade will be initiated and completed as follows:

a. The department shall give the person written notice that the person's medical certification status is "not certified" and that the commercial driver's license privilege will be removed from the person's driver's license 60 days after the date the medical examiner's certificate or medical variance expired or the medical variance was removed or rescinded unless the person submits to the department a current medical certificate or medical variance or self-certifies to a type of driving other than non-excepted interstate.

b. If the person submits a current medical examiner's certificate or medical variance before the end of the 60-day period, the department shall post a medical certification status of "certified" on the person's CDLIS driver's record and shall terminate the downgrade of the person's commercial driver's license.

c. If the person self-certifies to a type of driving other than non-excepted interstate before the end of the 60-day period, the department shall not remove the commercial driver's license privilege from the person's driver's license, and the person will have no medical certification status on the person's CDLIS driver's record.

d. If the person fails to take the action in either paragraph 607.50(5) "b" or "c" before the end of the 60-day period, the department shall remove the commercial driver's license privilege from the

person's driver's license and shall leave the person's medical certification status as "not certified" on the person's CDLIS driver's record.

607.50(6) *CDL downgrade of existing CDL holders who fail to enroll before January 30, 2014.* Every person subject to subrule 607.50(2) who fails to make a self-certification of type of driving or fails to give the department a copy of the person's medical examiner's certificate as required by subrule 607.50(3) before January 30, 2014, shall be subject to a CDL downgrade. The department shall post a medical certification status of "not certified" to the CDLIS driver's record and shall initiate a downgrade of the driver's commercial driver's license following the procedure set forth in subrule 607.50(5). In such cases, the 60-day period shall begin January 30, 2014, and the person shall be required to make an initial self-certification of type of driving to terminate the CDL downgrade and to avoid removal of the commercial driver's license privilege. The person's status and privilege under subrule 607.50(5) shall be determined according to the certification made or not made.

607.50(7) *Establishment or reestablishment of "certified" status.* A person who has no medical certification status or whose medical certification status has been posted as "not certified" on the person's CDLIS driver's record may establish or reestablish the status as "certified" by submitting a current medical examiner's certificate or medical variance to the department. A person who has failed to self-certify to a type of driving or has self-certified to a type of driving other than non-excepted interstate must also make a self-certification of type of driving to non-excepted interstate driving. The department shall then post a medical certification status of "certified" on the person's CDLIS driver's record.

607.50(8) *Reestablishment of the CDL privilege.* A person whose commercial driver's license privilege has been removed from the person's driver's license under the provisions of paragraph 607.50(5) "d" may reestablish the commercial driver's license privilege to the person's driver's license by either of the following methods:

a. Submitting a current medical examiner's certificate or medical variance to the department. A person who has failed to self-certify to a type of driving must also make an initial self-certification of type of driving to non-excepted interstate driving. The department shall then post a medical certification status of "certified" on the person's CDLIS driver's record and reestablish the commercial driver's license privilege to the person's driver's license, provided that the person otherwise remains eligible for a commercial driver's license.

b. Self-certifying to a type of driving other than non-excepted interstate. The department shall then reestablish the commercial driver's license privilege to the person's driver's license, provided that the person otherwise remains eligible for a commercial driver's license; the person will have no medical certification status on the driver's CDLIS driver's record.

607.50(9) *Change of type of driving.* A person may change the person's self-certification of type of driving at any time. As required by subrule 607.50(3), a person certifying to non-excepted interstate driving must give the department a copy of the person's current medical examiner's certificate prepared by a medical examiner.

607.50(10) *Record keeping.* The department shall comply with the medical record-keeping requirements set forth in 49 CFR Section 383.73.

This rule is intended to implement Iowa Code section 321.182; section 321.188 as amended by 2011 Iowa Acts, Senate File 205, sections 13 and 14; and 2011 Iowa Acts, Senate File 205, section 17.

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